

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029**

In the Matter of:

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Proceeding to Assess Class II
Administrative Penalty Under
Section 309(g) of the Clean Water Act

City of Richmond
900 East Broad Street
Richmond, Virginia

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Docket No. CWA-03-2014-0046

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**CONSENT AGREEMENT
AND FINAL ORDER**

Respondent

I. PRELIMINARY STATEMENT and STATUTORY AUTHORITY

1. This Consent Agreement and Final Order (CAFO) is entered into by the Director, Water Protection Division, United States Environmental Protection Agency, Region III (Complainant) and the City of Richmond (Richmond or Respondent) pursuant to Section 309(g) of the Clean Water Act (CWA or Act), 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. Part 22. The parties having agreed to settlement of violations of the Clean Water Act by Respondent, this CAFO simultaneously commences and concludes this action pursuant to 40 C.F.R. § 22.13(b) and 22.18(b)(2) and (3).

2. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), the Administrator of the United States Environmental Protection Agency (EPA) is authorized to assess administrative penalties against any person who violates any NPDES permit condition or limitation in an amount not to exceed \$10,000 per day for each day of violation, up to a total penalty amount of \$125,000.

3. Pursuant to the Debt Collection Improvement Act of 1996, codified at 28 U.S.C. § 2461, any person who has violated any NPDES permit condition or limitation after January 30, 1997 is liable for an administrative penalty not to exceed \$11,000 per day for each day of violation occurring between January 30, 1997 and March 15, 2004 up to a total penalty amount of \$137,500.

4. Pursuant to the Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective March 15, 2004), any person who has violated any NPDES permit condition or limitation after March 15, 2004 is liable for an administrative penalty not to exceed \$11,000 per day for each day of violation occurring after March 15, 2004 up to a total penalty amount of \$157,500.

5. Pursuant to the subsequent Civil Monetary Penalty Inflation Adjustment Rule, 40 C.F.R. Part 19 (effective January 12, 2009), any person who has violated any NPDES permit condition or limitation after January 12, 2009 is liable for an administrative penalty not to exceed \$ 16,000 per day for each day of violation occurring after January 12, 2009 up to a total penalty amount of \$177,500.

II. FINDINGS OF FACT and CONCLUSIONS OF LAW

1. Section 301(a) of the Act, 33 U.S.C. § 1311(a), prohibits the discharge of any pollutant (other than dredged or fill material) from a point source into waters of the United States except in compliance with a permit issued pursuant to the National Pollutant Discharge Elimination System (NPDES) program under Section 402 of the Act, 33 U.S.C. § 1342.

2. Section 402(a) of the Act, 33 U.S.C. § 1342(a), provides that the Administrator of EPA may issue permits under the NPDES program for the discharge of pollutants from point sources to waters of the United States or may authorize states to issue such permits. The discharges are subject to specific terms and conditions as prescribed in the permit.

3. Section 402(p) of the Act, 33 U.S.C. §1342(p) provides that both discharges from a municipal separate storm sewer system (MS4) and discharges associated with industrial activity may be subject to NPDES permitting requirements.

4. Pursuant to Section 402(b) of the Act, 33 U.S.C. §1342(b), EPA authorized the Commonwealth of Virginia (Commonwealth or Virginia) NPDES program on March 31, 1975. The Virginia Department of Environmental Quality (VADEQ) was authorized to issue general NPDES permits on April 20, 1991. On December 30, 2004, EPA approved the Commonwealth's request to transfer the issuance of general and individual permits for construction and MS4 storm water discharges from VADEQ to the Virginia Department of Conservation and Recreation (VADCR).

5. Pursuant to Section 402(i) of the Act, 33 U.S.C. § 11342(i), EPA retains its authority to take enforcement action in Virginia for NPDES permit violations.

6. The term "municipal separate storm sewer system" or "MS4" includes, *inter alia*, "a conveyance or system of conveyances (including roads with drainage systems, municipal streets, catch basins, curbs, gutters, ditches, manmade channels, or storm drains): (i) owned or operated by a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial

wastes, storm water, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated and approved management agency under section 208 of the CWA that discharges to waters of the United States.” 40 C.F.R. § 122.26(b)(8).

7. The term “small municipal separate storm sewer system” or “small MS4” means “all separate storm sewers that are: (i) owned or operated by the United States, a State, city, town, borough . . . or other public body (created by or pursuant to State law) having jurisdiction over disposal of . . . storm water. . . .; [and] (ii) Not defined as ‘large’ or ‘medium’ municipal separate storm sewer systems.” 40 C.F.R. § 122.26(b)(16) and (17).

8. Pursuant to 40 C.F.R. §122.26(a)(9)(i)(A), small MS4s require an NPDES permit if they are required to be regulated pursuant to 40 C.F.R. § 122.32.

9. Pursuant to 40 C.F.R. §122.32(a)(1), the Commonwealth of Virginia has determined that Richmond is a small MS4 located in an urbanized area as determined by the latest Decennial Census by the Bureau of the Census, and accordingly requires an NPDES permit.

10. Therefore, Richmond is a “small MS4” within the meaning of 40 C.F.R. § 122.26(b)(16).

11. The City’s MS4 is covered under the General Permit for Discharges of Stormwater from Small Municipal Separate Storm Sewer Systems, General Permit No. VAR04, effective July 9, 2008. Richmond’s permit registration number is VAR040005 (MS4 Permit).

12. The MS4 Permit requires Permittees to adhere to the Storm Water Management Program Requirements (Part I) and Conditions Applicable To All VPDES Permits (PART II) of the Permit.

13. Section II.B.6.d of the MS4 Permit states: “Materials that are soluble or erodible shall be protected from exposure to precipitation.”

14. “Storm water discharges associated with industrial activity” is defined at 40 C.F.R. § 122.26(a)(14) and 9VAC25-151-10 and includes “Landfills, land application sites and open dumps that receive or have received any industrial wastes...” and “Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221-25), 43, 44, 45 and 5171 which have vehicle maintenance shops, equipment cleaning operations or airport deicing operations...”

i) Storm water discharges associated with industrial activity are required to be authorized by either the General Virginia Pollutant Discharge Elimination System (VPDES) Permit for Storm Water Discharges Associated with Industrial Activity (General VPDES Stormwater Industrial Permit), or by an individual VPDES permit for storm water discharges associated with

industrial activity.

16. Richmond owns and operates the Hopkins Road Facility located at 3502 North Hopkins Road, Richmond, Virginia and the East Richmond Road Landfill, located at 3800 East Richmond Road. The Hopkins Road Facility is classified under Standard Industrial Classification Code 4173 and has a vehicle maintenance shop and the East Richmond Road Landfill is an inactive landfill. At the time of the inspection, each of these facilities was required to be covered by the General VPDES Industrial Stormwater Permit.

17. Section II.B.g. of the permit requires the permittee: “to develop an ...employee training program to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances and MS4 maintenance”. The City’s MS4 Program Plan in Section 6.2 states: “DPU will implement an employee training program for operations staff involved with vehicle maintenance and field activities that may impact the MS4.”

18. On January 23 and 24, 2012 EPA conducted a review of Richmond’s MS4 Program and its compliance with the MS4 Permit, including inspections of several City-owned facilities.

19. On May 15, 2012 EPA sent the report of EPA’s January 23 and 24, 2012 inspection to Richmond. The Inspection Report Identified several deficiencies in Richmond’s compliance with its MS4 Permit, as well as the absence of permit coverage for the industrial facilities noted above.

20. By letter dated June 29, 2012 Richmond sent a letter to EPA responding to numerous items identified in the inspection report and indicating its intent to comply with the various permit requirements identified in the report.

III. EPA FINDINGS OF VIOLATION

21. During its inspection, EPA inspected the Richmond Department of Public Works Hopkins Road Facility, which at the time included vehicle maintenance facilities, equipment and vehicle storage space as well as roadway maintenance equipment, natural gas fueling operations, refuse collection and waste transfer facilities and gravel and earthen materials stockpiles. At the time of the inspection, the facility did not have coverage under a VPDES Industrial Stormwater Permit.

22. During its inspection, EPA inspected the Richmond Department of Public Works East Richmond Road Landfill facility. This facility is an inactive landfill. At the time of the inspection, the East Richmond Road Landfill facility did not have coverage under the General VPDES Industrial Stormwater Permit.

23. During EPA’s inspection of the Hopkins Road facility soluble and erodible materials were observed exposed to precipitation events. Diesel fuel containers were observed

without secondary containment, visible sheens were seen adjacent to storm drain inlets, road sands were stored in a partially uncovered area and white goods were stored on the ground surface without containment.

24. During EPA's inspection of the East Richmond Road Landfill facility, soluble and erodible materials were observed exposed to precipitation events. Inspectors observed a fueling island without an overhead cover, an unknown white, powdery substance spilling into the ground surface from overturned drums in an abandoned Parks and Recreation building, drums of diesel fuel without secondary containment and evidence of leaking fuel as well as crushed paint cans and dried paint spills at the site.

25. At the time of inspection, the City did not have an employee training program to prevent and reduce stormwater pollution from activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances and MS4 maintenance.

26. Based upon the inspection, EPA has concluded that the Respondent's failure to: 1) have industrial storm water permits for the Hopkins Road and East Richmond Landfill facilities; 2) to prevent exposure of soluble and erodible materials to precipitation ; and 3) to have an employee training program to prevent and reduce storm water pollution form activities such as park and open space maintenance, fleet and building maintenance, new construction and land disturbances and MS4 maintenance constitute violations of Section 301 of the CWA, 33 U. S. C. §1311.

IV. CONSENT AGREEMENT AND FINAL ORDER

1. Respondent admits the jurisdictional allegations set forth herein.
2. For the purposes of this proceeding, Respondent neither admits nor denies the Findings of Fact and Conclusions of Law set forth in Section II, above, and waives any defenses it might have as to jurisdiction and venue, its right to contest the allegations through hearing or otherwise and its right to appeal the proposed final order accompanying the consent agreement.
3. Respondent agrees not to contest EPA's jurisdiction to issue and enforce this CAFO.
4. Respondent hereby expressly waives its right to a hearing on any issue of law or fact in this matter pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and consents to issuance of this CAFO without adjudication.
5. Each party to this action shall bear its own costs and attorney fees.

6. The provisions of this CAFO shall be binding upon the Respondent, its officers, principals, directors, successors and assigns.

7. The parties agree that settlement of this matter prior to the initiation of litigation is in the public interest and that entry of this CAFO is the most appropriate means of resolving this matter.

8. Pursuant to Section 309(g)(4)(A) of the Act, 33 U.S.C. § 1319(g)(4)(A), and 40 C.F.R. § 22.45(b), EPA is providing public notice and an opportunity to comment on the Consent Agreement prior to issuing the Final Order. In addition, pursuant to Section 309(g)(1)(A), EPA has consulted with the Commonwealth of Virginia regarding this action, and will mail a copy of this document to the appropriate Virginia official.

9. Based upon the foregoing and having taken into account the nature, circumstances, extent and gravity of the violation(s), Respondent's ability to pay, prior history of compliance, degree of culpability, economic benefit or savings resulting from the violations, and such other matters as justice may require pursuant to the authority of Section 309(g) of the Act, 33 U.S.C. § 1319(g), EPA HEREBY ORDERS AND Respondent HEREBY CONSENTS to pay a civil penalty in the amount of **twelve thousand dollars (\$12,000)** in full and final settlement of EPA's claims for civil penalties for the violations alleged herein.

10. Respondent shall pay the total administrative civil penalty of twelve thousand dollars (\$12,000) within thirty (30) days of the effective date of this CAFO pursuant to 40 C.F.R. § 22.31(c). Payment shall be made by one of the following methods set forth below.

Payment by check to "United States Treasury":

By regular mail:

U.S. EPA
Civil Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

Contact: Craig Steffen (513-487-2091)

By overnight delivery:

US EPA, Civil Penalties
Government Lock Box 979077
1005 Convention Plaza
Mail Station SL-MO-C2-GL
St. Louis, MO 63101

Contact: Craig Steffen (513-487-2091)

By Wire Transfer:

Federal Reserve Bank of New Lancaster
ABA = 021030004
Account = 68010727
SWIFT Address = FRNYUS33
33 Liberty Street
New Lancaster, NY 10045
(Field Tag 4200 of the wire transfer message should read:
D 68010727 Environmental Protection Agency)

By Automated Clearinghouse (ACH) Transfers for receiving U. S.
currency (also known as REX or remittance express):

PNC Bank
ABA = 051036706
Environmental Protection Agency
Account Number: 310006
CTX Format
Transaction Code 22 - checking
808 17th Street, NW
Washington, D.C. 20074

Contact for ACH: John Schmid (202-874-7026)

On-Line Payments:

The On-Line Payment Option, available through the Dept. of Treasury, can be accessed
from the information below:

WWW.PAY.GOV
Enter sfo 1.1 in the search field
Open form and complete required fields.

Additional payment guidance is available at:

http://www.epa.gov/ocfo/finservices/make_a_payment.htm

Respondent shall send notice of such payment, including a copy of the check if payment is
made by check, to the Regional Hearing Clerk at the following address:

Regional Hearing Clerk (3RC00)
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

-and-

Deane Bartlett, Esquire
Mail Code 3RC20
Office of Regional Counsel
U.S. EPA Region III
1650 Arch Street
Philadelphia, PA 19103-2029

11. This CAFO shall not relieve Respondent of its obligation to comply with all applicable provisions of federal, state or local law and ordinance, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit. Nor does this CAFO constitute a waiver, suspension or modification of the requirements of the CWA, 33 U.S.C. §§ 1251 *et seq.*, or any regulations promulgated thereunder.

12. The following notice concerns interest and late penalty charges that will accrue in the event that any portion of the civil penalty is not paid as directed:

Pursuant to 31 U.S.C. § 3717 and 40 C.F.R. § 13.11, EPA is entitled to assess interest and late payment penalties on outstanding debts owed to the United States and a charge to cover the costs of processing and handling a delinquent claim, as more fully described below. Accordingly, Respondent's failure to make timely payments as required herein or to comply with the conditions in this CAFO shall result in the assessment of late payment charges including interest, penalties, and/or administrative costs of handling delinquent debts.

Interest on the civil penalty assessed in this CAFO will begin to accrue on the date that a copy of this CAFO is mailed or hand-delivered to Respondent. However, EPA will not seek to recover interest on any amount of the civil penalty that is paid within thirty (30) calendar days after the date on which it is due. Interest will be assessed at the rate of the United States Treasury tax and loan rate in accordance with 40 C.F.R. § 13.11(a).

13. The costs of the Agency's administrative handling of overdue debts will be charged and assessed monthly throughout the period the debt is overdue. 40 C.F.R. § 13.11(b). A penalty charge of six percent per year will be assessed monthly on any portion of the civil penalty which remains delinquent more than ninety (90) calendar days. 40 C.F.R. § 13.11(c). Should assessment of the penalty charge on the debt be required, it shall accrue from the first day payment is delinquent. 31 C.F.R. § 901.9(d).

14. This Consent Agreement and Final Order resolve only the civil claims for the specific violations alleged herein. EPA reserves the right to commence action against any person,

including Respondent, in response to any condition which EPA determines may present an imminent and substantial endangerment to the public health, public welfare, or the environment. In addition, this settlement is subject to all limitations on the scope of resolution and to the reservation of rights set forth in Section 22.18(c) of the Consolidated Rules of Practice. Further, EPA reserves any rights and remedies available to it under the Clean Water Act, 33 U.S.C. § 301 *et seq.*, the regulations promulgated thereunder, and any other federal laws or regulations for which EPA has jurisdiction, to enforce the provisions of this CAFO, following its filing with the Regional Hearing Clerk.

15. Nothing in this CAFO shall be construed as prohibiting, altering or in any way eliminating the ability of EPA to seek any other remedies or sanctions available by virtue of Respondent's violations of this CAFO or of the statutes and regulations upon which this CAFO is based or for Respondent's violation of any applicable provision of law.

16. The penalty specified in Paragraph III. ¶ , above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

17. Entry of this CAFO is a final settlement of all violations alleged in this CAFO. EPA shall have the right to institute a new and separate action to recover additional civil penalties for the claims made in this CAFO if the EPA obtains evidence that the information and/or representations of the Respondent are false, or, in any material respect, inaccurate. This right shall be in addition to all other rights and causes of action, civil or criminal, the EPA may have under law or equity in such event.

18. The undersigned representative of Respondent certifies that he or she is fully authorized by the party represented to enter into the terms and conditions of this CAFO and to execute and legally bind that party to it.

19. All of the terms and conditions of this CAFO together comprise one agreement, and each of the terms and conditions is in consideration of all of the other terms and conditions. In the event that this CAFO, or one or more of its terms and conditions, is held invalid, or is not executed by all of the signatories in identical form, or is not approved in such identical form by the Regional Administrator or his designee, then the entire CAFO shall be null and void.

V. EFFECTIVE DATE

Pursuant to 40 C.F.R. § 22.45, this CAFO shall be issued after a 40-day public notice period was concluded. This CAFO will become final and effective 30 days after issuance, 33 U.S.C. § 1319(g)(4), and will become effective on that same date, 40 C.F.R. § 22.31(b).


FOR RESPONDENT, CITY OF RICHMOND:

Date: 3-12-14

By: Byron C. Marshall
Byron C. Marshall
Chief Administrative Officer

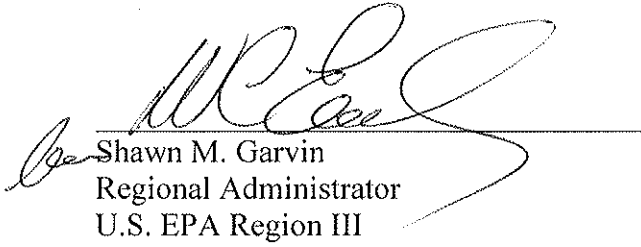
FOR THE U.S. ENVIRONMENTAL PROTECTION AGENCY:

Date: 4/30/14


Jon M. Capacasa, Director
Water Protection Division
U.S. EPA Region III

SO ORDERED, pursuant to 33 U.S.C. 1319(g), and 40 C.F.R. Part 22,

this 23 day of June, 2014


Shawn M. Garvin
Regional Administrator
U.S. EPA Region III

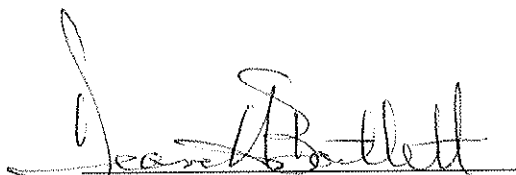
CERTIFICATE OF SERVICE

I hereby certify that on this day, I caused to be filed with the Regional Hearing Clerk, EPA Region III, the original Consent Agreement and Final Order, In the Matter of City of Richmond, EPA Docket No. CWA-03-2014-0046 and that a copy of this document was sent to the following individual in the manner described below:

By Certified Mail, Return Receipt Requested:

David B. Kearney
Assistant City Attorney
900 East Broad Street
Suite 300
Richmond, Virginia 23219

Date: June 24, 2014

A handwritten signature in black ink, appearing to read "Deane H. Bartlett", written over a horizontal line.

Deane H. Bartlett
Senior Assistant Regional Counsel
US EPA Region III

